

**Nevada Department of Agriculture
350 Capitol Hill Avenue
Reno, Nevada 89502**

NOTICE OF INTENT TO ADOPT REGULATIONS

Proposed amendment of NAC 588 pertaining to the intent to adopt regulations pertaining to the proposed regulation for ***Fertilizers and Restricted Fertilizer Dealers***.

Authority: NRS 588.

Date: December 2, 2004

Time: 9:00 am

Hearing on LCB File No. R242-03 to be immediately followed by Hearing on LCB File No. R035-04

Location:

Nevada Dept of Agriculture Offices,
350 Capitol Hill Avenue,
Reno NV 89502

Video Conferencing will be available in Las Vegas at:

Nevada Dept of Agriculture Offices,
2300 McLeod Street
Las Vegas NV 89104

Comments will be accepted at the Reno address, by email to: **chrism@agri.state.nv.us**, phone: 775 688-1180 ext. 247, or fax: 775 688-1178

Closing Date for Comments December 8, 2004.

Need for and purpose of the proposed regulation or amendment

1. Track the sales of particular fertilizers which can be used to formulate explosive. This is to protect homeland security.
2. Establish tolerances to metals in fertilizers based on industry based risk assessments to protect human health.

Summary of Proposed changes

- | | |
|---------|--|
| R035-04 | sets a fee of \$25.00 per year for a registration to sell restricted fertilizers. |
| R242-03 | (i) defines and sets the requirements for restricted fertilizer sales and restricted fertilizer dealers.
(ii) sets levels for non-nutritive metals in fertilizers.
(iii) exempts certain "ready-to-use" products such as potting soils and hydroponic solutions from the rule. NAC 588.050 Specifying minimum acceptable guarantees for micronutrients below which efficacy is not normally recognized
(iv) defines 'agricultural' for the purposes of NRS 588.215. |

There has previously been a hearing on R242-03, due to comments received and a need to improve the definition of ammonium nitrate, this hearing is being re-opened.

Detailed text of the proposed regulations are attached.

Economic effect of the proposed regulation on the businesses which it is to regulate

- a. Adverse effects: None. The \$25.00 annual registration fee was not considered significant by workshop attendees.
- b. Beneficial effects: The regulation is expected to reduce the likelihood of fertilizers being used to formulate explosives. Toxic metal levels in fertilizers will not exceed levels that would threaten the safety of the food supply.
- c. Immediate and long term effects: Same as b. above.

Economic effect of these proposed amendments on the public.

- a. Adverse effects:
None
- b. Beneficial effects:
Same as b. above.
- c. Immediate and long term economic effects:
Same as b. above.

Economic cost to the agency for enforcement of the proposed amendments

The economic cost is expected to be minimal. The system for monitoring sales of restricted fertilizers will be adopted from that already in place for restricted pesticide sales.

Description of any regulations of other state, local or federal governmental agencies which the proposed amendments overlap or duplicate

None

Fees: A \$25.00 annual fee is proposed to cover some of the administrative costs of the program.

The date, time, place, and manner in which interested parties may present their views at public hearing on the proposed amendments:

DATE: December 2, 2004
TIME: 9:00 a.m.
PLACE: Nevada Department of Agriculture
350 Capitol Hill Avenue
Reno, Nevada 89502

Video Conferencing in Las Vegas:

Nevada Department of Agriculture Office
2300 McLeod Street
Las Vegas, NV 89104

Written comments and testimony may be submitted prior to the hearing date and will be included with any testimony presented at the hearing. All verbal and written testimony will be in the record of the hearing.

Addresses at which the text of the proposed regulations may be inspected and copied:

The State Library, 100 Stewart Street, Carson City, Nevada, and all Nevada county libraries. Copies may also be at the Department of Agriculture office in Reno, Sparks, Elko, Las Vegas or Winnemucca during the hours of 8:00 a.m. until 5:00 p.m. Monday through Friday. This notice and text of the proposed regulation are also available in the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the internet at <http://www.agri.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

This notice of hearing has been posted at the following locations:

Nevada Department of Agriculture
350 Capitol Hill Avenue
Reno, NV 89502

Nevada Department of Agriculture
2150 Frazer Street
Sparks, NV 89431

Nevada Department of Agriculture
1550 South Wells Avenue
Reno, NV 89502

Nevada Department of Agriculture
1200 E. Winnemucca Blvd.
Winnemucca, NV 89445

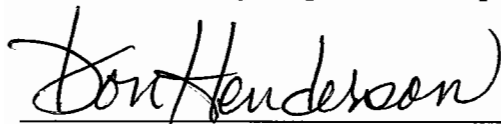
Nevada Department of Agriculture
Eyer H. Boies Building
1351 Elm Street
Elko, NV 89801

Nevada Department of Agriculture
2300 McLeod
Las Vegas, NV 89104

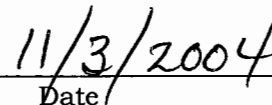
NOTE: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please call John O'Brien at the Nevada Department of Agriculture, 775-688-1182, as soon as possible.

NRS233B.064 Permanent regulations not to be adopted or revised by the Legislative Counsel; agency's reasons for adoption.

Upon adoption of any regulation, the agency, if requested to do so by an interested person before adoption, or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against adoption, and incorporated therein its reasons for overruling the consideration urged against its adoption.



Don Henderson, Director


Date

**PROPOSED REGULATION OF THE
STATE BOARD OF AGRICULTURE**

LCB File No. R035-04

July 27, 2004

EXPLANATION – Matter in *italics* is new; matter in brackets ~~{omitted material}~~ is material to be omitted.

AUTHORITY: §1, NRS 588.295.

A REGULATION relating to restricted-use commercial fertilizers and agricultural minerals; establishing the annual fee to register with the Director of the State Department of Agriculture to sell, offer to sell or to distribute a restricted-use commercial fertilizer or agricultural mineral; establishing under certain circumstances the penalty fee for the untimely renewal of such a registration; and providing other matters properly relating thereto.

Section 1. Chapter 588 of NAC is hereby amended by adding thereto a new section to read as follows:

1. The annual fee to register with the Director pursuant to NRS 588.295 to sell or offer to sell at retail, or to distribute or deliver for transportation for delivery to the consumer or user, a restricted-use commercial fertilizer or agricultural mineral is \$25.

2. Except as otherwise provided in NRS 588.295, the penalty fee if a person fails to renew his previous registration on or before February 1 next following its expiration is \$25.

**PROPOSED REGULATION OF THE DIRECTOR OF
THE STATE DEPARTMENT OF AGRICULTURE**

September 21, 2004

EXPLANATION – Matter in *italics* is new; matter in brackets [omitted material] is material to be omitted.

AUTHORITY: §§1-9, NRS 588.164.

A REGULATION relating to commercial fertilizers and agricultural minerals; classifying ammonium nitrate and anhydrous ammonia as restricted-use commercial fertilizers or agricultural minerals under certain circumstances; requiring a person who has a duty to keep a record of his sales of restricted-use commercial fertilizers or agricultural minerals to include in that record a unique number that provides positive identification of the person to whom the restricted-use commercial fertilizer or agricultural mineral was sold or delivered and to make that record available to the Director of the State Department of Agriculture upon request; prohibiting any person from selling, offering to sell or distributing a restricted-use commercial fertilizer or agricultural mineral if it is adulterated; excepting from certain requirements a commercial fertilizer or agricultural mineral that contains additional plant nutrients if it is offered for sale, sold or distributed as a ready-to-use or similar product; and providing other matters properly relating thereto.

Section 1. Chapter 588 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. *The following commercial fertilizers or agricultural minerals, if sold, offered for sale or distributed as single nutrients, not in combination with any other commercial fertilizer or agricultural mineral, are classified, pursuant to NRS 588.164, as restricted-use commercial fertilizers or agricultural minerals:*

1. *Ammonium nitrate containing 23% nitrogen or greater*

2. *Anhydrous ammonia.*

Sec. 3. 1. *A person required by NRS 588.295 to maintain a record of the sale of restricted-use commercial fertilizers or agricultural minerals shall include in that record a unique number that provides positive identification of the buyer.*

2. *The unique number must be obtained from an identification document that:*

(a) *Is issued by a governmental authority; and*

(b) *Includes a photograph of the buyer.*

3. *The person maintaining the record shall visually inspect the original or a photostatic or other copy of the identification document:*

(a) *Before the first sale or delivery to a buyer; and*

(b) *If subsequent sales or deliveries are made to that buyer, not less than annually thereafter.*

4. *As used in this section, "buyer" means the person to whom the restricted-use commercial fertilizer or agricultural mineral is sold or delivered.*

Sec. 4. *A person required by NRS 588.295 to maintain a record of the sale of restricted-use commercial fertilizers or agricultural minerals shall make the record available to the Director upon request.*

Sec. 5. 1. A person shall not sell, offer for sale or distribute a commercial fertilizer or agricultural mineral if it is adulterated.

2. For the purposes of this section, and except as otherwise provided in subsection 3, a commercial fertilizer or agricultural mineral is adulterated if:

(a) It contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil or water when:

(I) It is applied in accordance with the directions for use on the label or tag; or

(II) Adequate warning statements or directions for use which may be necessary to protect beneficial plant life, animals, humans, aquatic life, soil or water are not shown on the label or tag;

(b) Its actual composition differs from that set forth on the label or tag; or

(c) It contains unwanted crop seed or weed seed.

3. A commercial fertilizer or agricultural mineral is not adulterated solely because it contains one or more additional plant nutrients as set forth in NAC 588.050.

Sec. 6. 1. Except as otherwise provided in subsection 2, the Director hereby adopts by reference "Statement of Uniform Interpretation and Policy No. 25" in the form most recently published by the Association of American Plant Food Control Officials in its Official Publication, unless the Director gives notice pursuant to this section that the most recent revision is not suitable for this state.

2. Any reference in "Statement of Uniform Interpretation and Policy No. 25" to "section 13(a) of the Uniform State Fertilizer Bill" shall be deemed to be a reference to "section 5 of this regulation."

3. If “Statement of Uniform Interpretation and Policy No. 25” is revised, the Director will, not later than 6 months after the date of the publication of the revision, determine, after notice and hearing, whether the revision is suitable for this state. Not less than 30 days after the Director makes his determination, he will:

(a) If the Director determines the revision is suitable, file one copy of the revision with the Secretary of State and one copy with the State Library and Archives Administrator, and make at least one copy available for public inspection with his regulations; or

(b) If the Director determines that the revision is not suitable, file one copy of the determination with the Secretary of State, the State Library and Archives Administrator and the Legislative Counsel, and make at least one copy available for public inspection with his regulations.

4. The Official Publication, which contains “Statement of Uniform Interpretation and Policy No. 25,” is available from the Association of American Plant Food Control Officials, P.O. Box 33508, Raleigh, NC 27636-3508 for the price of \$30.

Sec. 7. 1. For the purpose of exempting commercial fertilizers and agricultural minerals that are not used for agricultural purposes from the license fees and reporting requirements of NRS 588.210, the Director interprets “agricultural” as used in NRS 588.215 to include “horticultural.”

2. As used in this section, “horticultural” includes, without limitation:

(a) The cultivation of plants for ornamental or decorative purposes; and

(b) The maintenance of lawns or turf.

Sec. 8. NAC 588.050 is hereby amended to read as follows:

588.050 1. Additional plant nutrients, besides *the primary nutrients*, nitrogen, phosphorus and potassium, when mentioned or claimed on the label or container, must be registered and guaranteed. Guarantees must be made on the elemental basis. Sources of the elements guaranteed must be shown on the application for registration. ~~[When]~~ *Except as otherwise provided in subsection 3, when* claims for such nutrients are made on the label, container or application for registration, the minimum percentages which will be accepted for registration are as follows:

Element	Percentage
Calcium (Ca)	1.00
Magnesium (Mg)	0.50
Sulfur (S)	1.00
Boron (B)	0.02
Chlorine (Cl)	0.10
Cobalt (Co)	0.0005
Copper (Cu)	0.05
Iron (Fe)	0.10
Manganese (Mn)	0.05
Molybdenum (Mo)	0.0005
Sodium (Na)	0.10
Zinc (Zn)	0.05

2. Guarantees or claims for the above-listed additional plant nutrients are the only ones which will be accepted. Proposed labels and directions for use of the fertilizer must be furnished with the application for registration. Warning or caution statements are required on the label for any product which contains 0.03 percent or more of boron in a water-soluble form or 0.001 percent or more of molybdenum. Any of the above-listed elements which are guaranteed must appear in the order listed, immediately following guarantees for the primary nutrients, nitrogen, phosphorus and potassium.

3. The provision set forth in subsection 1, which establishes the minimum percentages of additional plant nutrients which will be accepted for registration of a brand and grade of commercial fertilizer or agricultural mineral, does not apply to a commercial fertilizer or agricultural mineral that is sold, offered for sale or distributed as a ready-to-use or similar product, including, without limitation, a foliar fertilizer, horticultural growing medium or hydroponic fertilizer.

Sec. 9. 1. This section and sections 1 and 5 to 8, inclusive, of this regulation become effective when filed by the Legislative Counsel with the Secretary of State.

2. Sections 2, 3 and 4 of this regulation, if filed by the Legislative Counsel with the Secretary of State, become effective on January 1, 2005.

**NEVADA DEPARTMENT OF AGRICULTURE
SMALL BUSINESS IMPACT DISCLOSURE PROCESS
PURSUANT TO 233B "Nevada Administrative Procedures Act"**

The purpose of this Small Business Impact Form is to provide a frame work pursuant to NRS 233B.0608 to determine where a small business impact statement is required for submittal of a proposed regulation before the Nevada Department of Agriculture. If questions one (1) and two (2) are answered No, then a small business impact statement is not required. If question one (1) or two (2) is answered with a YES, then a small business impact statement is required prior to conducting a public workshops by the Department. (This form must be submitted with the proposed regulation when submitted for drafting by LCB and adoption by the Nevada State Board of Agriculture.)

Proposed regulation: Tracking sales of fertilizers that can be used to create explosives

Part 1

1. Does this proposed regulation impose a direct and significant economic burden upon a small business ? No The \$25.00 annual registration fee was not considered significant by the workshop attendees.
2. Does this proposed regulation restrict the formation, operation or expansion of a small business ? No

Note: Small Business is defined as a "business conducted for profit which employs fewer than 150 full-time or part-time employees" (NRS 233B.0382).

3. If **YES** to either of questions 1& 2, the following action must be taken:
 - a. Was a small business impact statement prepared and was it available at the public workshop ?
 - b. Attach the small business impact statement (part 2) as part of this form upon submission for drafting by LCB and adoption by the Nevada Board of Agriculture.

SMALL BUSINESS IMPACT STATEMENT
Small Business Impact Form- Part 2
(NRS 233B.0609)

1. Describe the manner in which comments were solicited from affected small businesses, a summary of the response from small businesses and an explanation of the manner in which other interested persons may obtain a copy of the summary.
2. The estimated economic effect of the proposed regulation on small business:
 - a. Both adverse and beneficial effects
 - b. Both direct and indirect effects
3. The description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses.
 - a. Simplification of the proposed regulation.
 - b. Establishment of different standards of compliance for a small business.
 - c. Modification of fees or other monetary interests that a small business is authorized to pay at a lower fee.
4. The estimated cost to the agency for enforcement of the proposed regulation.
5. If this regulation provides for a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.
6. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards relating to the same activity, provide an explanation of why the proposed regulation is duplicative or more stringent and why it is necessary.